some technical, mechanical defect, but on allegations of fraud in those who seek protection behind the corporate shield.[7] It must be admitted, however, that there is a somewhat general tendency in the authorities to disregard the distinction between technical oversights, on the one hand, and fraud, on the other.[8] To this effect is a late Missouri Supreme Court decision. *First National Bank* v. *Rockefeller*, 93 S. W. Rep. 761. Such decisions may be accounted for on the supposition that the less frequent cause for collateral attack has been merged by courts in the rule admittedly applicable to the more frequent cause for such attack.

TENTATIVE QUALIFICATIONS OF THE DOCTRINE OF A SEPARATE CORPORATE ENTITY. — Although in our courts the apparently sound conception[1] of a corporation as an organic or psychical reality, separate and distinct from the natural persons composing it, does not obtain, yet, on the basis of a legal fiction, it is in general treated as such an entity. This entity can sue and be sued; be grantor and grantee; and have a continued existence and rights and obligations in contract or tort, wholly independent of those of the individual members.[2] The corporation cannot be confronted with a stockholder's admissions,[3] nor can its property be attached for his debts.[4] Not even a sole stockholder can convey,[5] or sue to recover,[6] corporate property in his own name; nor can the corporation utilize his credits as a set-off.[7] Indeed, in the teeth of public policy, a ship owned by an English corporation composed partly of foreign members has been held entitled to registry "as wholly belonging to Her Majesty's subjects."[8] Yet firmly established and variously applied as is the "fiction" of a corporate entity, a qualifying doctrine has been proposed that under some circumstances it be disregarded.

Of the authorities, many decisions, which only apparently involve heedlessness of the "fiction," must be eliminated from consideration. For example, the adjudications that conveyances to corporations composed of the insolvent grantors are fraudulent, rest not upon the basis that there is no real conveyance, but upon the strong evidence that the conveyances are only to the intent and effect of defrauding creditors.[9] There must likewise be distinguished decisions resulting from *ultra vires* doctrines,[10] and from the doctrine that a fraudulently formed corporation has no legal existence.[11] Moreover, the opinions in the Northern Securities case indicate no belief

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[7] The Christian & Craft Grocery Co. *v.* Fruitdale Lumber Co., 121 Ala. 340.

[8] See Pattison *v.* Albany Bldg. & Loan Ass'n, 63 Ga. 373.

[1] *Cf.* the German view, Holtzendorff's Rechtslexikon, tit. Juristische Person, § 943. See also 19 HARV. L. REV. 222.

[2] See Mor., Priv. Corp., 2 ed., § 232.

[3] Fairfield, etc., Co. *v.* Thorp, 13 Conn. 173.

[4] Williamson *v.* Smoot, 7 Martin (La.) 31.

[5] Parker *v.* Bethel Hotel Co., 96 Tenn. 252.

[6] Button *v.* Hoffman, 61 Wis. 20.

[7] Gallagher *v.* Germania, etc., Co., 53 Minn. 214.

[8] The Queen *v.* Arnaud, 16 L. J. Q. B. (N. S.) 50. See also Foster *v.* Commissioners of Inland Revenue, [1894] 1 Q. B. 516.

[9] See Booth *v.* Bunce, 33 N. Y. 139. But *cf.* First, etc., Bank *v.* Trebein Co., 59 Oh. St. 316.

[10] See Mill *v.* Hawker, L. R. 9 Exch. 309.

[11] See Brundred *v.* Rice, 49 Oh. St. 640; also NOTES, p. 222.

that the result hinged on disregarding the corporate entity;[12] and it is also noticeable that in questions of the jurisdiction of the federal courts over suits to which a corporation is a party, substantially the same result has been reached by conclusive presumptions as would logically follow the conception of a corporate entity.[13] The distinction sometimes suggested, that law perceives only the corporate garb, while equity may "draw the veil,"[14] not only has little in justice or logic to commend it, but seems so generally ignored by the authorities that it may be disregarded.[15] Yet after all this is said, there undoubtedly remain many judicial statements that the corporate entity will sometimes be disregarded, and five or six decisions expressly to that effect,[15] — about half of them cases where the court is striving to give effect to a statute under which the state is pursuing the corporation for alleged illegal acts.

Although the numerous expressions of opinion may presage the ultimate adoption of the limiting doctrine, as yet the question surely remains *sub judice*.[16] The most promising statement of the tentative qualifying doctrine seems to be that the "fiction" of a corporate entity will be disregarded "when urged to an intent and purpose not within the reason and policy of the fiction."[17] Thus phrased, the qualification is apparently just and unobjectionable. Yet there seem to be weighty reasons for rejecting it. The merits of general and sharply defined rules of law need no encomiums. The proposed exception, by its specious generality, will tend to introduce additional elements of litigation-breeding uncertainty into the already chaotic corporation law. By what standards can it clearly be determined what is "within the reason and policy of the fiction"? A comparison of the cases where the entity has been observed with those where it has been suggested that it be disregarded, shows but too clearly how ragged would be the line of demarcation. Furthermore, there seems to be no urgent need of the innovation; for the "public inconvenience, wrong, fraud, or crime,"[18] to prevent which the "fiction" is to be abjured, can almost always be reached through other legal principles. Take, for instance, the facts of a recent case where the court, fully maintaining the doctrine of a corporate entity, held that a corporation's promise not to engage in a certain business, assented to by its principal stockholders, bound neither them nor a new corporation formed by them.[19] *Hall's Safe Co.* v. *Herring, etc., Co.*, 146 Fed. Rep. 37 (C. C. A., Sixth Circ.). Here the stockholders might readily have been bound by individual contracts, breaches of which equity would enjoin; and the new corporation might then very possibly be enjoined as a confederate in these illegal acts.[20] If in scattered instances suitable established legal remedies are lacking, the legislature, which has granted corporate powers, should be left to provide against abuse of them.

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[12] See Northern Securities Co. *v.* United States, 193 U. S. 197.

[13] See 1 Smith, Cas. on Priv. Corp., 2 ed., 94–102.

[14] See Mor., Priv. Corp., 2 ed., § 227.

[15] See Ferguson *v.* Earl of Kinnoull, 9 Cl. & F. 250; State *v.* Standard Oil Co., 49 Oh. St. 137; Sportsman, etc., Co. *v.* American, etc., Co., 30 Wkly. L. Bul. 87 (Cincinnati, Super. Ct.); People *v.* North, etc., Co., 121 N. Y. 582; United States *v.* Milwaukee, etc., Co., 142 Fed. Rep. 247.

[16] In Ohio, however, the qualifying doctrine under discussion seems established. See Ohio cases, *supra*.

[17] See 7 Am & Eng. Encyc., 2 ed., 634.

[18] See United States *v.* Milwaukee, etc., Co., *supra*, 255.

[19] *Cf.* Moore, etc., Co. *v.* Towers, etc., Co., 87 Ala. 206.

[20] *Cf.* Lewis *v.* Gollner, 129 N. Y. 227.